

Ellen Dowd, Esq.
 State Bar Number 141206
 2658 Del Mar Heights Road #228
 Del Mar, California 92014
 (858) 342-8360
 Fax: 858-755-6348
 ellendowd@sbcglobal.net

Attorney for Plaintiff/Counter-Defendant, MARY STRUBLE, As Conservator for CS

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

MARY STRUBLE, As Conservator for CS,

Plaintiff,

v.

FALLBROOK UNION HIGH SCHOOL
 DISTRICT, a Local Educational Agency
Defendant.

FALLBROOK UNION HIGH SCHOOL
 DISTRICT,

Counterclaimant,

v.

MARY STRUBLE, As Conservator for CS,

Counter-Defendant,

CASE NO.: 07 CV 2328 LAB (CAB)

PLAINTIFF'S OPPOSITION FOR HEARING
 ON CROSS-MOTIONS FOR PARTIAL
 REVERSAL OF
 ADMINISTRATIVE DECISION

Date: August 1, 2008

Time: 2:00 p.m.

Magistrate Judge: Hon. Cathy Ann
 Bencivengo

07 CV 2328 LAB (CAB)
 Plaintiff's Opposition Brief To
 Cross- Motions For Partial
 Reversal of Administrative
 Decision

Plaintiff, MARY STRUBLE ("Plaintiff"), as Conservator for C.S., ("Student"), respectfully submits Plaintiff's Opposition Brief For Hearing on Cross-Motions For Partial Reversal of Administrative Decision, against Fallbrook Union High School District ("the District"), as follows:

I.

ARGUMENT

A. Student Has Met His Burden of Proof in the Due Process Hearing.

In a related case, since dismissed, entitled Fallbrook Union High School District v. Struble, USDC,SDCA Case No. 08-0049, the District filed private conservatorship papers to prove that C.S. is uneducable. These protected papers were stricken, and the District was appropriately sanctioned.

Now, in furtherance of its opinion that S.S. does not deserve a high school education resulting in a high school diploma, the District is attempting to equate the fact that an 18-year old student is conserved, with its incorrect conclusion that C.S. cannot be educated and receive a high school diploma.

The evidence submitted by C.S. supplementing the record clearly indicates that he is progressing toward a high school diploma. The ALJ in the administrative due process proceeding did hear defamatory remarks by the District, but never heard the argument that "conserved" means "uneducable." This is just adding insult to injury.

To date, C.S.'s parents have spent \$9,000.00 on tuition at Fusion, as well as transportation costs. The District should be held responsible for this.

B. The ALJ Should Have Fashioned This Very Relief.

The ALJ's have discretion to award compensatory education, and, have made awards containing a mandate to work toward a high school diploma. In the accompanying Request For Judicial Notice, one such case decided on February 27, 2008 discusses the equitable remedies available, and does not unlawfully delegate the award of compensatory education to the IEP Team.

07 CV 2328 LAB (CAB)
Plaintiff's Opposition Brief To
Cross- Motions For Partial
Reversal of Administrative
Decision

IV.

CONCLUSION

The Decision should be upheld as to the District's procedural denial of FAPE for Student, and that an award of compensatory education is appropriate. The Court should reverse the ALJ's Order that the compensatory education remedy be decided by the IEP Team, as this is a clear abuse of discretion. The Court should award compensatory education to Student by ordering the District to immediately reimburse parents the sum of \$9,000.00, plus reimbursement for transportation, and order the District to continue to fund Student's placement and program at Fusion, with transportation (or transportation reimbursement) until Student earns his high school diploma.

The Court should order that Student is the prevailing party in both the administrative proceeding and this appeal, for which Student is entitled to an award of reasonable attorney fees and costs.

Dated: July 11,, 2008

Respectfully submitted,



Ellen Dowd, Attorney for Plaintiff/
Counter-Defendant, Mary Struble